

AMENDED IN SENATE MAY 20, 2002

AMENDED IN SENATE MAY 2, 2002

SENATE BILL

No. 1950

Introduced by Senator Figueroa

February 22, 2002

An act to amend Sections 800, 801, 803.1, 805, 2001, 2008, 2013, 2020, 2027, 2052, 2350, 2507, and 3504 of, to add Sections 802.2, 2135.5, 2246, and 3519.5 to, to add Chapter 1.6 (commencing with Section 920) to Division 2 of, to add and repeal Section 2220.1 of, and to repeal Section 2026 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1950, as amended, Figueroa. Healing arts.

(1) Existing law, the Medical Practice Act, creates the Medical Board of California within the Department of Consumer Affairs. Under the act, the board, consisting of 19 members, is responsible through its Division of Licensing for the licensure of physicians and surgeons, and the practice of medicine without a license issued by the division is punishable as a misdemeanor offense. The act additionally makes the board responsible through its Division of Medical Quality, consisting of 12 members, for the regulation of the practice of physicians and surgeons. Under the act, the board is authorized to employ an executive director and other assistance in discharging its duties. Under existing law, the act's provisions creating the board and authorizing it to employ this assistance become inoperative on July 1, 2003, and are repealed on January 1, 2004.

This bill would extend the dates on which these provisions become inoperative and are repealed to, respectively, July 1, 2005, and January 1, 2006. The bill would increase the membership of the board and its Division of Medical Quality by 2 and would require the Director of Consumer Affairs to retain, prior to March 31, 2003, an enforcement program monitor who would evaluate, for a period of 2 years, the board's disciplinary system and report his or her findings to the Legislature, the board, and the Department of Consumer Affairs. The bill would revise certain licensure provisions pertaining to out-of-state practitioners and would also revise those provisions to allow a physician and surgeon whose license has been expired for less than 5 years and who meets specified criteria to obtain licensure, without paying fees that would otherwise be associated with issuance of the license. The bill would authorize a diversion program to order a physician and surgeon participating in the program to submit to an examination by a physician and surgeon or a psychologist and would make his or her failure to comply with the order grounds for disciplinary action. The bill would additionally specify, with respect to disciplinary actions, that any proposed decision or decision issued in those proceedings finding that the physician and surgeon has engaged in sexual activity shall contain an order revoking his or her license. The bill would make a person who conspires with or aids or abets another in the unlicensed practice of medicine guilty of a public offense and would increase the punishment that may be imposed for the commission of this offense by allowing imprisonment in the state prison and by increasing the allowable term of imprisonment in a county jail and the maximum amount of the fine.

Because the bill would create a new crime and would increase the allowable term of imprisonment in a county jail, it would impose a state-mandated local program.

(2) The Medical Practice Act provides for licensure of the practice of midwifery by the board's Division of Licensing and requires that the licensed midwife practice under the supervision of a licensed physician and surgeon.

This bill would require the board to adopt emergency regulations defining the appropriate standard of care and level of supervision required for the practice of midwifery.

(3) Existing law, the Physician Assistant Practice Act, creates the Physician Assistant Committee within the Medical Board of California that, in conjunction with the board, licenses and regulates the practice



of a physician assistant. The provisions creating the committee become inoperative on July 1, 2003, and are repealed on January 1, 2004.

This bill would extend the dates on which these provisions become inoperative and are repealed to, respectively, July 1, 2007, and January 1, 2008. The bill would authorize the committee, under the name of the board, to issue a probationary license to practice, subject to particular terms and conditions. The bill would also make a physician assistant subject to peer review proceedings.

(4) Existing law requires every professional liability insurer to report either to the board or to the Osteopathic Medical Board any settlement over \$30,000, and any arbitration award in any amount of a malpractice claim or action against a physician or surgeon licensed by that board. Existing law also requires the board and the California Board of Podiatric Medicine to disclose to an inquiring member of the public specified information concerning the practice status of their licensees, and the board is additionally required to post this sort of information regarding its licensees on the board's Internet Web site.

This bill would additionally require a professional liability insurer to report a civil judgment in any amount of a malpractice action, whether or not the judgment was subsequently vacated by a settlement, that is not reversed on appeal and would include this information, as well as other specified data, among the items that the board and the California Board of Podiatric Medicine are required to disclose to an inquiring member of the public. The bill would require the board to post on its Internet Web site the material it is required to disclose to any inquiring member of the public and would specify that these materials are not a part of the central file maintained by the board for each of its licensees. The bill would additionally require an attorney to serve the board with a copy of a complaint or an arbitration demand in a malpractice action or claim at the time of its filing.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

SECTION 1. Section 800 of the Business and Professions Code is amended to read:

800. (a) The Medical Board of California, the Board of Psychology, the Dental Board of California, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the State Board of Optometry, the Veterinary Medical Board, the Board of Behavioral Sciences, and the California State Board of Pharmacy shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to the following information:

(1) Any conviction of a crime in this or any other state that constitutes unprofessional conduct pursuant to the reporting requirements of Section 803.

(2) Any judgment or settlement requiring the licensee or his or her insurer to pay any amount of damages in excess of three thousand dollars (\$3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802.

(3) Any public complaints for which provision is made pursuant to subdivision (b) .

(4) Disciplinary information reported pursuant to Section 805.

(b) Each board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in, or connected with, the performance of professional services by the licensee.

If a board, or division thereof, a committee, or a panel has failed to act upon a complaint or report within five years, or has found that the complaint or report is without merit, the central file shall be purged of information relating to the complaint or report.

Notwithstanding this subdivision, the Board of Psychology, the Board of Behavioral Sciences, and the Respiratory Care Board of

1 California shall maintain complaints or reports as long as each
2 board deems necessary.

3 (c) The contents of any central file that are not public records
4 under any other provision of law shall be confidential except that
5 the licensee involved, or his or her counsel or representative, shall
6 have the right to inspect and have copies made of his or her
7 complete file except for the provision that may disclose the
8 identity of an information source. For the purposes of this section,
9 a board may protect an information source by providing a copy of
10 the material with only those deletions necessary to protect the
11 identity of the source or by providing a comprehensive summary
12 of the substance of the material. Whichever method is used, the
13 board shall ensure that full disclosure is made to the subject of any
14 personal information that could reasonably in any way reflect or
15 convey anything detrimental, disparaging, or threatening to a
16 licensee's reputation, rights, benefits, privileges, or qualifications,
17 or be used by a board to make a determination that would affect a
18 licensee's rights, benefits, privileges, or qualifications. The
19 information required to be disclosed pursuant to Section 803.1
20 shall not be considered among the contents of a central file for the
21 purposes of this subdivision.

22 The licensee may, but is not required to, submit any additional
23 exculpatory or explanatory statement or other information that the
24 board shall include in the central file.

25 Each board may permit any law enforcement or regulatory
26 agency when required for an investigation of unlawful activity or
27 for licensing, certification, or regulatory purposes to inspect and
28 have copies made of that licensee's file, unless the disclosure is
29 otherwise prohibited by law.

30 These disclosures shall effect no change in the confidential
31 status of these records.

32 SEC. 2. Section 801 of the Business and Professions Code is
33 amended to read:

34 801. (a) Every insurer providing professional liability
35 insurance to a person who holds a license, certificate or similar
36 authority from or under any agency mentioned in subdivision (a)
37 of Section 800 (except as provided in subdivisions (b), (c), and (d))
38 shall send a complete report to that agency as to any settlement or
39 arbitration award over three thousand dollars (\$3,000) of a claim
40 or action for damages for death or personal injury caused by that

1 person's negligence, error, or omission in practice, or rendering of
2 unauthorized professional services. The report shall be sent within
3 30 days after the written settlement agreement has been reduced
4 to writing and signed by all parties thereto or within 30 days after
5 service of the arbitration award on the parties.

6 (b) Every insurer providing professional liability insurance to
7 a physician and surgeon licensed pursuant to Chapter 5
8 (commencing with Section 2000) or the Osteopathic Initiative Act
9 shall send a complete report to the Medical Board of California or
10 the Osteopathic Medical Board of California, as appropriate, as to
11 any settlement over thirty thousand dollars (\$30,000); or
12 arbitration award of any amount; or civil judgment of any amount,
13 whether or not vacated by a settlement after entry of the judgment,
14 that was not reversed on appeal; of a claim or action for damages
15 for death or personal injury caused by that person's negligence,
16 error, or omission in practice, or rendering of unauthorized
17 professional services. The report shall be sent within 30 days after
18 the written settlement agreement has been reduced to writing and
19 signed by all parties thereto or within 30 days after service of the
20 arbitration award on the parties or within 30 days after the date of
21 entry of the civil judgment.

22 (c) Every insurer providing professional liability insurance to
23 a person licensed pursuant to Chapter 13 (commencing with
24 Section 4980) or Chapter 14 (commencing with Section 4990)
25 shall send a complete report to the Board of Behavioral Science
26 Examiners as to any settlement or arbitration award over ten
27 thousand dollars (\$10,000) of a claim or action for damages for
28 death or personal injury caused by that person's negligence, error,
29 or omission in practice, or rendering of unauthorized professional
30 services. The report shall be sent within 30 days after the written
31 settlement agreement has been reduced to writing and signed by
32 all parties thereto or within 30 days after service of the arbitration
33 award on the parties.

34 (d) Every insurer providing professional liability insurance to
35 a dentist licensed pursuant to Chapter 4 (commencing with Section
36 1600) shall send a complete report to the Dental Board of
37 California as to any settlement or arbitration award over ten
38 thousand dollars (\$10,000) of a claim or action for damages for
39 death or personal injury caused by that person's negligence, error,
40 or omission in practice, or rendering of unauthorized professional



1 ~~service services~~. The report shall be sent within 30 days after the
2 written settlement agreement has been reduced to writing and
3 signed by all parties thereto or within 30 days after service of the
4 arbitration award on the parties.

5 (e) Notwithstanding any other provision of law, no insurer shall
6 enter into a settlement without the written consent of the insured,
7 except that this prohibition shall not void any settlement entered
8 into without that written consent. The requirement of written
9 consent shall only be waived by both the insured and the insurer.
10 This section shall only apply to a settlement on a policy of
11 insurance executed or renewed on or after January 1, 1971.

12 SEC. 3. Section 802.2 is added to the Business and
13 Professions Code, to read:

14 802.2. An attorney at the time of filing a civil complaint or
15 demand for arbitration seeking damages for death or personal
16 injury caused by the alleged negligence, error, or omission in
17 practice, or rendering of unauthorized professional services by a
18 physician and surgeon licensed pursuant to Chapter 5
19 (commencing with Section 2000) shall serve a copy of the
20 complaint or demand upon the Medical Board of California. The
21 board shall treat the complaint or demand as a complaint from a
22 patient.

23 SEC. 4. Section 803.1 of the Business and Professions Code
24 is amended to read:

25 803.1. (a) Notwithstanding any other provision of law, the
26 Medical Board of California and the California Board of Podiatric
27 Medicine shall disclose to an inquiring member of the public
28 information regarding the status of the license of a licensee and any
29 enforcement actions taken against a licensee by either board or by
30 another state or jurisdiction, including, but not limited to, all of the
31 following:

- 32 (1) Temporary restraining orders issued.
- 33 (2) Interim suspension orders issued.
- 34 (3) Limitations on practice ordered by the board.
- 35 (4) Public letters of reprimand issued.
- 36 (5) Infractions, citations, or fines imposed.
- 37 (6) Misdemeanor convictions, if substantially related to the
38 practice of medicine.
- 39 (7) Civil judgments in any amount, whether or not vacated by
40 a settlement after entry of the judgment, that were not reversed on

1 appeal; and arbitration awards in any amount; of a claim or action
2 for damages for death or personal injury caused by the physician
3 and surgeon's negligence, error, or omission in practice, or
4 rendering of unauthorized professional services. ~~If three or more~~
5 *The number and amounts of* settlements of these sorts of claims or
6 actions, ~~each~~ in the amount of thirty thousand dollars (\$30,000) or
7 more, ~~have been entered into by the licensee during a 10-year~~
8 ~~period, these settlements in the possession, custody, or control of~~
9 ~~the board shall be disclosed throughout the term that the licensee~~
10 holds a certificate to practice, ~~accompanied by the average~~
11 ~~number of settlements and average amounts for the physician's or~~
12 ~~surgeon's specialty or subspecialty and disclaimers pursuant to~~
13 ~~subdivision (c) explaining the reasons that a physician or surgeon~~
14 ~~might settle a claim of this nature without being at fault. All~~
15 ~~settlements of these sorts of claims or actions, of one hundred fifty~~
16 ~~thousand dollars (\$150,000) or more, shall be disclosed~~
17 ~~throughout the term that the licensee holds a certificate to practice.~~

18 (8) Current American Board of Medical Speciality
19 certification or board equivalent *as certified by the Medical Board*
20 *of California or the California Board of Podiatric Medicine.*

21 (9) Approved postgraduate training.

22 (10) Completed investigations that have been referred to the
23 Attorney General for the filing of an accusation, *unless it has been*
24 *rejected by the Attorney General.*

25 (b) Notwithstanding any other provision of law, the Medical
26 Board of California and the California Board of Podiatric
27 Medicine shall disclose to an inquiring member of the public
28 information regarding the status of the license of a licensee that is
29 deemed necessary by the board for the protection and education of
30 the public including, but not limited to, information required to be
31 disclosed pursuant to subdivision (a), any summaries of hospital
32 disciplinary actions that result in the termination or revocation of
33 a licensee's staff privileges for a medical disciplinary cause or
34 reason, and any enforcement actions taken against a licensee by the
35 board or by another state or jurisdiction.

36 (c) The Medical Board of California and the California Board
37 of Podiatric Medicine may formulate appropriate disclaimers or
38 explanatory statements to be included with any information
39 released, and may, by regulation, establish categories of
40 information that need not be disclosed to an inquiring member of

1 the public because that information is unreliable or not sufficiently
2 related to the licensee's professional practice.

3 (d) Nothing in this section shall be construed as affecting in any
4 manner the rights provided under Chapter 3.5 (commencing with
5 Section 6250) of Division 7 of Title 1 of the Government Code.

6 SEC. 5. Section 805 of the Business and Professions Code is
7 amended to read:

8 805. (a) As used in this section, the following terms have the
9 following definitions:

10 (1) "Peer review body" includes:

11 (A) A medical or professional staff of any health care facility
12 or clinic licensed under Division 2 (commencing with Section
13 1200) of the Health and Safety Code or of a facility certified to
14 participate in the federal Medicare program as an ambulatory
15 surgical center.

16 (B) A health care service plan registered under Chapter 2.2
17 (commencing with Section 1340) of Division 2 of the Health and
18 Safety Code or a disability insurer that contracts with licentiates
19 to provide services at alternative rates of payment pursuant to
20 Section 10133 of the Insurance Code.

21 (C) Any medical, psychological, marriage and family therapy,
22 social work, dental, or podiatric professional society having as
23 members at least 25 percent of the eligible licentiates in the area
24 in which it functions (which must include at least one county),
25 which is not organized for profit and which has been determined
26 to be exempt from taxes pursuant to Section 23701 of the Revenue
27 and Taxation Code.

28 (D) A committee organized by any entity consisting of or
29 employing more than 25 licentiates of the same class that functions
30 for the purpose of reviewing the quality of professional care
31 provided by members or employees of that entity.

32 (2) "Licentiate" means a physician and surgeon, podiatrist,
33 clinical psychologist, marriage and family therapist, clinical social
34 worker, physician assistant, or dentist. "Licentiate" also includes
35 a person authorized to practice medicine pursuant to Section 2113.

36 (3) "Agency" means the relevant state licensing agency
37 having regulatory jurisdiction over the licentiates listed in
38 paragraph (2).

39 (4) "Staff privileges" means any arrangement under which a
40 licentiate is allowed to practice in or provide care for patients in

1 a health facility. Those arrangements shall include, but are not
2 limited to, full staff privileges, active staff privileges, limited staff
3 privileges, auxiliary staff privileges, provisional staff privileges,
4 temporary staff privileges, courtesy staff privileges, locum tenens
5 arrangements, and contractual arrangements to provide
6 professional services, including, but not limited to, arrangements
7 to provide outpatient services.

8 (5) “Denial or termination of staff privileges, membership, or
9 employment” includes failure or refusal to renew a contract or to
10 renew, extend, or reestablish any staff privileges, if the action is
11 based on medical disciplinary cause or reason.

12 (6) “Medical disciplinary cause or reason” means that aspect
13 of a licentiate’s competence or professional conduct which is
14 reasonably likely to be detrimental to patient safety or to the
15 delivery of patient care.

16 (7) “805 report” means the written report required under
17 subdivision (b).

18 (b) The chief of staff of a medical or professional staff or other
19 chief executive officer, medical director, or administrator of any
20 peer review body and the chief executive officer or administrator
21 of any licensed health care facility or clinic shall file an 805 report
22 with the relevant agency within 15 days after the effective date of
23 any of the following which take place as a result of an action of a
24 peer review body:

25 (1) A licentiate’s application for staff privileges or membership
26 is denied or rejected for a medical disciplinary cause or reason.

27 (2) A licentiate’s membership, staff privileges, or employment
28 is terminated or revoked for a medical disciplinary cause or reason.

29 (3) Restrictions are imposed, or voluntarily accepted, on staff
30 privileges, membership, or employment for a cumulative total of
31 30 days or more for any 12-month period, for a medical
32 disciplinary cause or reason.

33 (c) The chief of staff of a medical or professional staff or other
34 chief executive officer, medical director, or administrator of any
35 peer review body and the chief executive officer or administrator
36 of any licensed health care facility or clinic shall file an 805 report
37 with the relevant agency within 15 days after any of the following
38 takes place after notice of either an investigation or the impending
39 denial or rejection of the application for a medical disciplinary
40 cause or reason:

1 (1) Resignation or leave of absence from membership, staff, or
2 employment.

3 (2) The withdrawal or abandonment of a licentiate's
4 application for staff privileges or membership.

5 (3) The request for renewal of those privileges or membership
6 is withdrawn or abandoned.

7 (d) For purposes of filing an 805 report, the signature of at least
8 one of the individuals indicated in subdivision (b) or (c) on the
9 completed form shall constitute compliance with the requirement
10 to file the report.

11 (e) An 805 report shall also be filed within 15 days following
12 the imposition of summary suspension of staff privileges,
13 membership, or employment, if the summary suspension remains
14 in effect for a period in excess of 14 days.

15 (f) A copy of the 805 report, and a notice advising the licentiate
16 of his or her right to submit additional statements or other
17 information pursuant to Section 800, shall be sent by the peer
18 review body to the licentiate named in the report.

19 The information to be reported in an 805 report shall include the
20 name and license number of the licentiate involved, a description
21 of the facts and circumstances of the medical disciplinary cause or
22 reason, and any other relevant information deemed appropriate by
23 the reporter.

24 A supplemental report shall also be made within 30 days
25 following the date the licentiate is deemed to have satisfied any
26 terms, conditions, or sanctions imposed as disciplinary action by
27 the reporting peer review body. In performing its dissemination
28 functions required by Section 805.5, the agency shall include a
29 copy of a supplemental report, if any, whenever it furnishes a copy
30 of the original 805 report.

31 If another peer review body is required to file an 805 report, a
32 health care service plan is not required to file a separate report with
33 respect to action attributable to the same medical disciplinary
34 cause or reason. If the Medical Board of California or a licensing
35 agency of another state revokes or suspends, without a stay, the
36 license of a physician, a peer review body is not required to file an
37 805 report when it takes an action as a result of the revocation or
38 suspension.

39 (g) The reporting required herein shall not act as a waiver of
40 confidentiality of medical records and committee reports. The

1 information reported or disclosed shall be kept confidential except
2 as provided in subdivision (c) of Section 800 and Sections 803.1
3 and 2027, provided that a copy of the report containing the
4 information required by this section may be disclosed as required
5 by Section 805.5 with respect to reports received on or after
6 January 1, 1976.

7 (h) The Medical Board of California, the Osteopathic Medical
8 Board of California, and the Dental Board of California shall
9 disclose reports as required by Section 805.5.

10 (i) An 805 report shall be maintained by an agency for
11 dissemination purposes for a period of three years after receipt.

12 (j) No person shall incur any civil or criminal liability as the
13 result of making any report required by this section.

14 (k) A willful failure to file an 805 report by any person who is
15 designated or otherwise required by law to file an 805 report is
16 punishable by a fine not to exceed one hundred thousand dollars
17 (\$100,000) per violation. The fine may be imposed in any civil or
18 administrative action or proceeding brought by or on behalf of any
19 agency having regulatory jurisdiction over the person regarding
20 whom the report was or should have been filed. If the person who
21 is designated or otherwise required to file an 805 report is a
22 licensed physician and surgeon, the action or proceeding shall be
23 brought by the Medical Board of California. The fine shall be paid
24 to that agency but not expended until appropriated by the
25 Legislature. A violation of this subdivision may constitute
26 unprofessional conduct by the licensee. A person who is alleged
27 to have violated this subdivision may assert any defense available
28 at law. As used in this subdivision, “willful” means a voluntary
29 and intentional violation of a known legal duty.

30 (l) Except as otherwise provided in subdivision (k), any failure
31 by the administrator of any peer review body, the chief executive
32 officer or administrator of any health care facility, or any person
33 who is designated or otherwise required by law to file an 805
34 report, shall be punishable by a fine that under no circumstances
35 shall exceed fifty thousand dollars (\$50,000) per violation. The
36 fine may be imposed in any civil or administrative action or
37 proceeding brought by or on behalf of any agency having
38 regulatory jurisdiction over the person regarding whom the report
39 was or should have been filed. If the person who is designated or
40 otherwise required to file an 805 report is a licensed physician and

surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. The amount of the fine imposed, not exceeding fifty thousand dollars (\$50,000) per violation, shall be proportional to the severity of the failure to report and shall differ based upon written findings, including whether the failure to file caused harm to a patient or created a risk to patient safety; whether the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report exercised due diligence despite the failure to file or whether they knew or should have known that an 805 report would not be filed; and whether there has been a prior failure to file an 805 report. The amount of fine imposed may also differ based on whether a health care facility is a small or rural hospital as defined in Section 124840 of the Health and Safety Code.

(m) A health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that negotiates and enters into a contract with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code, when determining participation with the plan or insurer, shall evaluate, on a case-by-case basis, licentiates who are the subject of an 805 report, and not automatically exclude or deselect these licentiates.

SEC. 6. Chapter 1.6 (commencing with Section 920) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 1.6. HEALTH CARE PROFESSIONAL DISASTER
RESPONSE ACT

920. This chapter shall be known and may be cited as the Health Care Professional Disaster Response Act.

921. (a) The Legislature finds and declares the following:

(1) In times of national or state disasters, a shortage of qualified health care practitioners may exist in areas throughout the state where they are desperately required to respond to public health emergencies.

(2) Health care practitioners with lapsed or inactive licenses could potentially serve in those areas where a shortage of qualified health care practitioners exists, if licensing requirements were streamlined and fees curtailed.

(b) It is, therefore, the intent of the Legislature to address these matters through the provisions of the Health Care Professional Disaster Response Act.

922. (a) A physician and surgeon who satisfies the requirements of Section 2439 but whose license has been expired for less than five years may be licensed under this chapter.

(b) To be licensed under this chapter, a physician and surgeon shall complete an application, on a form prescribed by the Medical Board of California, and submit it to the board, along with the following:

(1) Documentation that the applicant has completed the continuing education requirements described in Article 10 (commencing with Section 2190) of Chapter 5 for each renewal period during which the applicant was not licensed.

(2) A complete set of fingerprints as required by Sections 144 and 2082, together with the fee required for processing those fingerprints.

(c) An applicant shall not be required to pay any licensing, delinquency, or penalty fees for the issuance of a license under this chapter.

SEC. 7. Section 2001 of the Business and Professions Code is amended to read:

2001. There is in the Department of Consumer Affairs a Medical Board of California that consists of 21 members, nine of whom shall be public members.

The Governor shall appoint 19 members to the board, subject to confirmation by the Senate, seven of whom shall be public members. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member, and their initial appointment shall be made to fill, respectively, the first and second public member vacancies that occur on or after January 1, 1983.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

1 The repeal of this section renders the board subject to the review
2 required by Division 1.2 (commencing with Section 473).

3 SEC. 8. Section 2008 of the Business and Professions Code
4 is amended to read:

5 2008. The Division of Medical Quality shall consist of 14
6 members of the board, six of whom shall be public members. The
7 Division of Licensing shall consist of seven members, three of
8 whom shall be public members.

9 Each member appointed to the board shall be assigned by the
10 Governor to a specific division, except that, commencing July 1,
11 1994, those members of the board who prior to July 1, 1994, were
12 assigned to the Division of Allied Health Professions shall be
13 members of the Division of Medical Quality.

14 SEC. 9. Section 2013 of the Business and Professions Code
15 is amended to read:

16 2013. (a) The board and each division may convene from
17 time to time as deemed necessary by the board or a division.

18 (b) Eight members of the Division of Medical Quality, and four
19 members of the Division of Licensing shall constitute a quorum for
20 the transaction of business at any division meeting. Four members
21 of a panel of the Division of Medical Quality shall constitute a
22 quorum for the transaction of business at any meeting of the panel.
23 Eleven members shall constitute a quorum for the transaction of
24 business at any board meeting.

25 (c) It shall require the affirmative vote of a majority of those
26 members present at a division, panel, or board meeting, those
27 members constituting at least a quorum, to pass any motion,
28 resolution, or measure. A decision by a panel of the Division of
29 Medical Quality to discipline a physician and surgeon shall require
30 an affirmative vote, at a meeting or by mail, of a majority of the
31 members of that panel; except that a decision to revoke the
32 certificate of a physician and surgeon shall require the affirmative
33 vote of four members of that panel.

34 SEC. 10. Section 2020 of the Business and Professions Code
35 is amended to read:

36 2020. The board may employ an executive director exempt
37 from the provisions of the Civil Service Act and may also employ
38 investigators, legal counsel, medical consultants, and other
39 assistance as it may deem necessary to carry into effect this
40 chapter. The board may fix the compensation to be paid for

1 services subject to the provisions of applicable state laws and
2 regulations and may incur other expenses as it may deem
3 necessary. Investigators employed by the board shall be provided
4 special training in investigating medical practice activities.

5 The Attorney General shall act as legal counsel for the board for
6 any judicial and administrative proceedings and his or her services
7 shall be a charge against it.

8 This section shall become inoperative on July 1, 2005, and, as
9 of January 1, 2006, is repealed, unless a later enacted statute,
10 which becomes effective on or before January 1, 2006, deletes or
11 extends the dates on which it becomes inoperative and is repealed.

12 SEC. 11. Section 2026 of the Business and Professions Code
13 is repealed.

14 SEC. 12. Section 2027 of the Business and Professions Code
15 is amended to read:

16 2027. (a) On or after July 1, 2001, unless otherwise
17 authorized by the Department of Information Technology
18 pursuant to Executive Order D-3-99, the board shall post on the
19 Internet the following information regarding licensed physicians
20 and surgeons:

21 (1) With regard to the status of the license, whether or not the
22 licensee is in good standing, subject to a temporary restraining
23 order (TRO), or subject to an interim suspension order (ISO).

24 (2) With regard to prior discipline, whether or not the licensee
25 has been subject to discipline by the board of another state or
26 jurisdiction.

27 (3) Any felony convictions reported to the board after January
28 3, 1991.

29 (4) All current accusations filed by the Attorney General.

30 (5) Any malpractice judgment or arbitration award reported to
31 the board after January 1, 1993.

32 (6) Any hospital disciplinary actions that resulted in the
33 termination or revocation of a licensee's hospital staff privileges
34 for a medical disciplinary cause or reason.

35 (7) Appropriate disclaimers and explanatory statements to
36 accompany the above information.

37 (8) Any information disclosed pursuant to Section 803.1.

38 (b) The board shall provide links to other Web sites on the
39 Internet that provide information on board certifications that meet
40 the requirements of subdivision (b) of Section 651. The board may

1 provide links to other Web sites on the Internet that provide
2 information on health care service plans, health insurers, hospitals,
3 or other facilities. The board may also provide links to any other
4 sites that would provide information on the affiliations of licensed
5 physicians and surgeons.

6 SEC. 13. Section 2052 of the Business and Professions Code
7 is amended to read:

8 2052. (a) Notwithstanding Section 146, any person who
9 practices or attempts to practice, or who advertises or holds
10 himself or herself out as practicing, any system or mode of treating
11 the sick or afflicted in this state, or who diagnoses, treats, operates
12 for, or prescribes for any ailment, blemish, deformity, disease,
13 disfigurement, disorder, injury, or other physical or mental
14 condition of any person, without having at the time of so doing a
15 valid, unrevoked, or unsuspended certificate as provided in this
16 chapter, or without being authorized to perform the act pursuant
17 to a certificate obtained in accordance with some other provision
18 of law is guilty of a public offense, punishable by a fine not
19 exceeding ten thousand dollars (\$10,000), or by imprisonment in
20 the state prison, or by imprisonment in a county jail not exceeding
21 one year, or by both the fine and either imprisonment.

22 (b) Any person who conspires with or aids or abets another to
23 commit any act described in subdivision (a) is guilty of a public
24 offense, subject to the punishment described in that subdivision.

25 SEC. 14. Section 2135.5 is added to the Business and
26 Professions Code, to read:

27 2135.5. The Division of Licensing may determine that an
28 applicant for a physician and surgeon's certificate has satisfied the
29 clinical instruction requirements of Sections 2089.5 and 2089.7 if
30 the applicant meets all of the following criteria:

31 (a) He or she holds an unlimited and unrestricted license as a
32 physician and surgeon in another state.

33 (b) He or she has been licensed by that state to practice as a
34 physician and surgeon for 10 or more years.

35 (c) He or she is certified by a specialty board approved by the
36 American Board of Medical Specialties.

37 SEC. 15. Section 2220.1 is added to the Business and
38 Professions Code, to read:

39 2220.1. (a) (1) The director shall appoint a Medical Board of
40 California Enforcement Program Monitor prior to March 31,

1 2003. The director may retain a person for this position by a
2 personal services contract, the Legislature finding, pursuant to
3 Section 19130 of the Government Code, that this is a new state
4 function.

5 (2) The director shall supervise the enforcement program
6 monitor and may terminate or dismiss him or her from this
7 position.

8 (b) The director shall advertise the availability of this position.
9 The requirements for this position include prior experience as an
10 enforcement monitor, experience in conducting investigations,
11 and familiarity with state laws, rules, and procedures pertaining to
12 the board and with relevant administrative procedures.

13 (c) (1) The enforcement program monitor shall monitor and
14 evaluate the disciplinary system and procedures of the board,
15 making as his or her highest priority the reform and reengineering
16 of the board's enforcement program and operations, and the
17 improvement of the overall efficiency of the board's disciplinary
18 system.

19 (2) This monitoring duty shall be performed on a continuing
20 basis for a period not exceeding two years from the date of the
21 enforcement program monitor's appointment and shall include,
22 but not be limited to, improving the quality and consistency of
23 complaint processing and investigation, reducing the timeframes
24 for completing complaint processing and investigation, reducing
25 any complaint backlog, assuring consistency in the application of
26 sanctions or discipline imposed on licensees, and shall include the
27 following areas: the accurate and consistent implementation of the
28 laws and rules affecting discipline, staff concerns regarding
29 disciplinary matters or procedures, appropriate utilization of
30 licensed professionals to investigate complaints, and the board's
31 cooperation with other governmental entities charged with
32 enforcing related laws and regulations regarding physicians and
33 surgeons. The enforcement program monitor shall also evaluate
34 the effectiveness and efficiency of the board's diversion program
35 and make recommendations regarding the continuation of the
36 program and any changes or reforms required to assure physicians
37 and surgeons participating in the program are appropriately
38 monitored and the public is protected from physicians and
39 surgeons who are impaired due to alcohol or drug abuse or mental
40 or physical illness.

1 (3) The enforcement program monitor shall exercise no
2 authority over the board's discipline operations or staff; however,
3 the board and its staff shall cooperate with him or her, and the
4 board shall provide data, information, and case files as requested
5 by the enforcement program monitor to perform all of his or her
6 duties.

7 (4) The director shall assist the enforcement program monitor
8 in the performance of his or her duties, and the enforcement
9 program monitor shall have the same investigative authority as the
10 director.

11 (d) The enforcement program monitor shall submit an initial
12 written report of his or her findings and conclusions to the board,
13 the department, and the Legislature no later than October 1, 2003,
14 and every six months thereafter, and be available to make oral
15 reports to each, if requested to do so. The enforcement program
16 monitor may also provide additional information to either the
17 department or the Legislature at his or her discretion or at the
18 request of either the department or the Legislature. The
19 enforcement program monitor shall make his or her reports
20 available to the public or the media. The enforcement program
21 monitor shall make every effort to provide the board with an
22 opportunity to reply to any facts, findings, issues, or conclusions
23 in his or her reports with which the board may disagree.

24 (e) The board shall reimburse the department for all of the costs
25 associated with the employment of an enforcement program
26 monitor.

27 (f) This section becomes inoperative on March 31, 2005, and
28 as of January 1, 2006, is repealed, unless a later enacted statute,
29 that is enacted before January 1, 2006, deletes or extends the dates
30 on which it becomes inoperative and is repealed.

31 SEC. 16. Section 2246 is added to the Business and
32 Professions Code, to read:

33 2246. Any proposed decision or decision issued under this
34 article, that contains any finding of fact that the licensee engaged
35 in any act of sexual contact, as defined in Section 729, with a
36 patient, or has committed an act or been convicted of a sex offense
37 as defined in Section 44010 of the Education Code, shall contain
38 an order of revocation. The revocation shall not be stayed by the
39 administrative law judge.

1 SEC. 17. Section 2350 of the Business and Professions Code
2 is amended to read:

3 2350. (a) The division shall establish criteria for the
4 acceptance, denial, or termination of physicians and surgeons in a
5 diversion program. Only those physicians and surgeons who have
6 voluntarily requested diversion treatment and supervision by a
7 committee shall participate in a program.

8 (b) A physician and surgeon under current investigation by the
9 division may request entry into the diversion program by
10 contacting the Chief or Deputy Chief of Enforcement of the
11 Medical Board of California. The Chief or Deputy Chief of
12 Enforcement of the Medical Board of California shall refer the
13 physician and surgeon who requests participation in the diversion
14 program to a committee for evaluation of eligibility, even if the
15 physician and surgeon is currently under investigation by the
16 division, as long as the investigation is based primarily on the
17 self-administration of drugs or alcohol under Section 2239, or the
18 illegal possession, prescription, or nonviolent procurement of
19 drugs for self-administration, and does not involve actual harm to
20 the public or his or her patients. Prior to referring a physician and
21 surgeon to the diversion program, the division may require any
22 physician and surgeon who requests participation under those
23 circumstances, or if there are other violations, to execute a
24 statement of understanding in which the physician and surgeon
25 agrees that violations of this chapter, or other statutes that would
26 otherwise be the basis for discipline, may nevertheless be
27 prosecuted should the physician and surgeon be terminated from
28 the program for failure to comply with program requirements.

29 (c) Neither acceptance into nor participation in the diversion
30 program shall preclude the division from investigating or
31 continuing to investigate any physician and surgeon for any
32 unprofessional conduct committed before, during, or after
33 participation in the diversion program.

34 (d) Neither acceptance into nor participation in the diversion
35 program shall preclude the division from taking disciplinary
36 action or continuing to take disciplinary action against any
37 physician and surgeon for any unprofessional conduct committed
38 before, during, or after participation in the diversion program,
39 except for conduct that resulted in the physician and surgeon's
40 referral to the diversion program.



1 (e) Any physician and surgeon terminated from the diversion
2 program for failure to comply with program requirements is
3 subject to disciplinary action by the division for acts committed
4 before, during, and after participation in the diversion program.
5 The division shall not be precluded from taking disciplinary action
6 for violations identified in the statement of understanding
7 described in subdivision (b) if a physician and surgeon is
8 terminated from the diversion program for failure to comply with
9 program requirements. The termination of a physician and
10 surgeon who has been referred to the diversion program pursuant
11 to subdivision (b) shall be reported by the program manager to the
12 division.

13 (f) Nothing in this section shall preclude a physician and
14 surgeon who is not the subject of a current investigation from
15 self-referring to the diversion program on a confidential basis.
16 Subdivision (b) shall not apply to a physician and surgeon who
17 applies for the diversion program in accordance with this
18 subdivision.

19 (g) Any physician and surgeon who successfully completes the
20 diversion program shall not be subject to any disciplinary actions
21 by the board for any alleged violation that resulted in referral to the
22 diversion program. Successful completion shall be determined by
23 the program manager but shall include, at a minimum, three years
24 during which the physician and surgeon has remained free from
25 the use of drugs or alcohol and adopted a lifestyle to maintain a
26 state of sobriety.

27 (h) The division shall establish criteria for the selection of
28 administrative physicians and surgeons who shall examine
29 physicians and surgeons requesting diversion under a program.
30 Any reports made under this article by the administrative
31 physician and surgeon shall constitute an exception to Section
32 2263 and to Sections 994 and 995 of the Evidence Code.

33 (i) The division shall require biannual reports from each
34 committee which shall include, but not be limited to, information
35 concerning the number of cases accepted, denied, or terminated
36 with compliance or noncompliance, and a cost analysis of the
37 program. The Bureau of Medical Statistics may assist the
38 committees in the preparation of the reports.

39 (j) Each physician and surgeon shall sign an agreement that
40 diversion records may be used in disciplinary or criminal

1 proceedings if the physician and surgeon is terminated from the
2 diversion program and one of the following conditions exists:

3 (1) His or her participation in the diversion program is a
4 condition of probation.

5 (2) He or she has disciplinary action pending or was under
6 investigation at the time of entering the diversion program.

7 (3) A diversion evaluation committee determines that he or she
8 presents a threat to the public health or safety.

9 This agreement shall also authorize the diversion program to
10 exchange information about the physician and surgeon's recovery
11 with a hospital well-being committee or monitor and with the
12 board's licensing program, if appropriate, and to acknowledge,
13 with the physician and surgeon's approval, that he or she is
14 participating in the diversion program. In addition, this agreement
15 shall authorize the diversion program to order the physician and
16 surgeon to be examined by one or more physicians and surgeons
17 or psychologists designated by the diversion program. The failure
18 of a physician and surgeon to comply with this order constitutes
19 grounds for the suspension or revocation of his or her certificate.
20 Nothing in this section shall be construed to allow release of
21 alcohol or drug treatment records in violation of federal or state
22 law.

23 SEC. 18. Section 2507 of the Business and Professions Code
24 is amended to read:

25 2507. (a) The license to practice midwifery authorizes the
26 holder, under the supervision of a licensed physician and surgeon,
27 to attend cases of normal childbirth and to provide prenatal,
28 intrapartum, and postpartum care, including family-planning care,
29 for the mother, and immediate care for the newborn.

30 (b) As used in this article, the practice of midwifery constitutes
31 the furthering or undertaking by any licensed midwife, under the
32 supervision of a licensed physician and surgeon who has current
33 practice or training in obstetrics, to assist a woman in childbirth so
34 long as progress meets criteria accepted as normal. All
35 complications shall be referred to a physician and surgeon
36 immediately. The practice of midwifery does not include the
37 assisting of childbirth by any artificial, forcible, or mechanical
38 means, nor the performance of any version.



1 (c) As used in this article, “supervision” shall not be construed
2 to require the physical presence of the supervising physician and
3 surgeon.

4 (d) The ratio of licensed midwives to supervising physicians
5 and surgeons shall not be greater than four individual licensed
6 midwives to one individual supervising physician and surgeon.

7 (e) A midwife is not authorized to practice medicine and
8 surgery by this article.

9 (f) The board shall adopt in accordance with the Administrative
10 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
11 Part 1 of Division 3 of Title 2 of the Government Code),
12 emergency regulations defining the appropriate standard of care
13 and level of supervision required for the practice of midwifery.
14 The adoption of emergency regulations described in this section
15 shall be deemed an emergency and necessary for the immediate
16 preservation of public peace, health and safety, or general welfare.

17 SEC. 19. Section 3504 of the Business and Professions Code
18 is amended to read:

19 3504. There is established a Physician Assistant Committee
20 of the Medical Board of California. The committee consists of nine
21 members.

22 This section shall become inoperative on July 1, 2007, and, as
23 of January 1, 2008, is repealed, unless a later enacted statute,
24 which becomes effective on or before January 1, 2008, deletes or
25 extends the dates on which it becomes inoperative and is repealed.
26 The repeal of this section renders the committee subject to the
27 review required by Division 1.2 (commencing with Section 473).

28 SEC. 20. Section 3519.5 is added to the Business and
29 Professions Code, to read:

30 3519.5. (a) The committee may issue under the name of the
31 board a probationary license to an applicant subject to terms and
32 conditions, including, but not limited to, any of the following
33 conditions of probation:

34 (1) Practice limited to a supervised, structured environment
35 where the applicant’s activities shall be supervised by another
36 physician assistant.

37 (2) Total or partial restrictions on issuing a drug order for
38 controlled substances.

39 (3) Continuing medical or psychiatric treatment.

1 (4) Ongoing participation in a specified rehabilitation
2 program.

3 (5) Enrollment and successful completion of a clinical training
4 program.

5 (6) Abstention from the use of alcohol or drugs.

6 (7) Restrictions against engaging in certain types of medical
7 services.

8 (8) Compliance with all provisions of this chapter.

9 (b) The committee and the board may modify or terminate the
10 terms and conditions imposed on the probationary license upon
11 receipt of a petition from the licensee.

12 (c) Enforcement and monitoring of the probationary
13 conditions shall be under the jurisdiction of the committee and the
14 board. These proceedings shall be conducted in accordance with
15 Chapter 5 (commencing with Section 11500) of Part 1 of Division
16 3 of Title 2 of the Government Code.

17 SEC. 21. No reimbursement is required by this act pursuant
18 to Section 6 of Article XIII B of the California Constitution
19 because the only costs that may be incurred by a local agency or
20 school district will be incurred because this act creates a new crime
21 or infraction, eliminates a crime or infraction, or changes the
22 penalty for a crime or infraction, within the meaning of Section
23 17556 of the Government Code, or changes the definition of a
24 crime within the meaning of Section 6 of Article XIII B of the
25 California Constitution.

